UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/541
7 November 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 541

Case No. 562: IBARRIA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Arnold Kean; Mr. Luis de Posadas Montero;

Whereas, on 28 August 1990, Frank J. Ibarria, a former staff member of the United Nations, filed an application the pleas of which read in part as follows:

"II. PLEAS

7. The Applicant respectfully requests the Administrative Tribunal:

...

(11) To order the Respondent, pursuant to article 9 of its Statute:

(a) To rescind his decision of 25 June 1990 to maintain his decision of 11 September 1989 to reclassify the Applicant's post as Library Assistant at GS-5 level under the new seven-level grade structure.

(b) To restore the Applicant's acquired rights to the corresponding highest level General Service post as Supervisor at Principal GS-7 level under the new seven-level grade structure, retroactive from 1 January 1985, commensurate with his highest level General service post as Supervisor at Principal G-5

level under the old five-level grade structure, pursuant to theprovisions of Article 101 of the Charter of the United Nations, staff regulation 2.1, paragraph 7 of the Administrative Instruction ST/AI/301 of 10 March 1983, articles 2 and 7 of the Universal Declaration of Human Rights and to the jurisprudence of the Tribunal in Judgements No. 173: Mortished (1981), No. 388: Moser (1987) and No. 478: Sundaram (1990).

(c) To award the Applicant appropriate amount of arrears, representing the difference between the salary and allowances he actually received and the salary and allowances he would have received had he been reclassified as Supervisor at Principal GS-7 level under the new seven-level grade structure retroactive from 1 January 1985.

(d) To pay, on behalf of the Applicant and of the Organization, appropriate contributions to the United Nations Joint Staff Pension Fund on the basis of the amount of arrears referred to in item (c) above, retroactive from 1 January 1985.

(e) To award the Applicant appropriate and adequate compensation for the moral and material injuries suffered by him as a consequence of the unreasonable delays in the New York General Service Classification Appeals and Review Committee procedures for 28 months during 1987 - 1989, in the first instance, and for another three months during March - June 1990, in the second instance, which were entirely caused by the Respondent, causing thereby a 'denial of justice' in his appeal.

(12) To hold oral proceedings on the case in order to hear the testimonies of the Applicant and other concerned witnesses, particularly the following:

..."

Whereas, on 25 September 1990, the Applicant submitted an amended plea in which he requested the Tribunal to order production of certain information and documents by the Respondent;

Whereas the Respondent filed his answer on 12 December 1990;

Whereas the Applicant filed written observations on 15 March 1991;

Whereas the Applicant submitted an additional written statement and additional documents on 1 August 1991;

Whereas, on 18 September 1991, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas additional information was submitted at the request of the Tribunal by the Applicant on 23 October 1991 and by the Respondent on 23 and 30 October 1991;

Whereas the Applicant submitted an additional written statement and an additional document on 4 November 1991;

Whereas the Applicant submitted additional information at the request of the Tribunal on 5 November 1991;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 19 September 1960 as a Messenger at the G-1 level, was transferred to the Dag Hammarskjold Library, in the Department of Conference Services, on 1 April 1962 as a Clerk-Labourer and received a permanent appointment on 1 January 1963. Through successive promotions, he reached the G-5 level as Supervisor on 1 April 1979.

The International Civil Service Commission having, in July 1982, approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels, all General Service posts in New York were classified under procedures set out in Administrative Instruction ST/AI/301 of 10 March 1983.

In accordance with the Administrative Instruction, a description of the post encumbered by the Applicant was prepared for initial classification. In June 1983 the Applicant accordingly completed section A of the classification form (P.270) while his supervisor completed section B. In August 1983 the Classification Section tentatively recommended that the post be classified at the GS-4 level. After a review of the post, the Classification Review Group recommended in a report adopted on 27 June 1985 that the

post be classified at that level. The Assistant Secretary-General for Personnel Services subsequently approved that classification level, with the functional title of Library Clerk.

In a memorandum dated 1 October 1985, the Acting Executive Officer of the Department of Conference Services conveyed to the Assistant Secretary-General for Personnel Services the "disappointment and dissatisfaction" of the staff of the Dag Hammarskjold Library with the classification review of General Service Library functions; he suggested that these results might, in some part, be due to incomplete and partially inaccurate job descriptions prepared at the time of the initial review, in June 1983, and also noted that the introduction of technological applications to Library functions, after the initial submission of job descriptions, was not reflected in the classification levels assigned by both the Classification Section and the Classification Review Group. In a reply dated 21 October 1985, the Director of the Division of Policy Co-ordination, Office of Personnel Services, invited the Department to submit revised job descriptions for the posts of those staff members whose functions had changed after the beginning of the classification exercise. Since the Applicant's functions had changed during that period, a revised job description was prepared. On 19 December 1985 the Applicant again completed section A of the classification form (P.270) and, in completing section B, his supervisor indicated that the following change had occurred in the duty assignment:

> "In order to keep the collection current, the incumbent was given the added responsibility in September 1984 of identifying superfluous material for withdrawal from the collection by either interpreting and implementing existing guidelines for retention periods or by other criteria such as usage and physical condition of the material".

The Classification Review Panel, successor to the Classification Review Group, reviewed the Applicant's post on the basis of the revised job description and recommended in a report dated 20 October 1986 that it be classified at the GS-4 level. The Assistant Secretary-General for Personnel Services approved that classification level on 22 January 1987, with the functional title of Library Clerk.

On 30 April 1987 the Applicant appealed the decision to classify his post at the GS-4 level in a memorandum to the Assistant Secretary-General which read:

> "1. I wish to appeal the classification of my post at the G-4 level ... I believe that the functions of my post were correctly described in my job description but that the classification standard was improperly applied, this resulting in a lower grade level than is warranted. I feel that my post should have been graded at the G-6 level.
>
> 2. I would like to bring to the attention of the Committee several factors which I feel may have been overlooked in the classification of my post:
>
> (a) I am the supervisor of the Main Stacks group of the Dag Hammarskjöld Library. The people I supervise have been re-classified at the G-4 level and I feel that, as supervisor, I should be at a higher level than that of the people under my supervision.
>
> (b) This post involves many complex tasks requiring a great deal of in-depth knowledge of the organization and structure of the Dag Hammarskjöld Library as well as of the Organization as a whole, and I believe that tasks performed at my level of responsibility deserve to be graded at the G-6 level."

On 13 May 1987 the Director of the Dag Hammarskjold Library "strongly supported" the Applicant's appeal. On 18 January 1988 the Applicant amended his appeal by seeking reclassification at the GS-7 level and reinstatement of his former functional title of Supervisor. On 13 December 1988 the Applicant's appeal was transmitted to the New York General Service Classification Appeals and Review Committee (NYGSCARC), a review body established with effect from 16 May 1986 to consider classification appeals. On 5 April 1989 NYGSCARC considered the Applicant's appeal. It found that the post "closely matches the guidelines at the GS-5 level" and therefore recommended that the post be upgraded to GS-5 with the functional title of Library Assistant. This recommendation was approved by the Assistant Secretary-General for Human Resources Management (formerly Assistant Secretary-General for Personnel Services) and on 11 September 1989 the Applicant was informed accordingly.

On 25 January 1990 the Applicant requested the Secretary-General's consent to direct submission of an application to the Tribunal. On 16 March 1990 he was advised that it had been decided that NYGSCARC would again review his case and communicate its findings and recommendation to him and to the Office of Human Resources Management; the Assistant Secretary-General for Human Resources Management would then reconsider the Applicant's case in the light of those findings and recommendation; should the Applicant wish to appeal the decision taken as a result, the Secretary-General would agree to direct submission of an application to the Tribunal.

On 21 March 1990 the Applicant submitted to NYGSCARC a statement of facts with relevant documents, including a job description, further revised in 1988, in which his supervisor had indicated, in section B, additional assignments entrusted to the Applicant in May 1987. On 26 April 1990 NYGSCARC again reviewed the Applicant's case. The findings and recommendation of NYGSCARC read as follows:

> "Findings
>
> 7. The New York General Service Classification Appeals and Review Committee re-reviewed the appeal at its tenth meeting on 26 April 1990. Based upon its review of the job description, the information provided by the appellant in the memoranda of appeal and related attachments, the analysis provided by the Compensation and Classification Service which confirmed the initial classification decision, the Committee concluded that the functions of the post corresponded to the GS-5 level depicted in the General Service Classification Standards.
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> Recommendation
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> 8. Accordingly, the Committee recommends that the post be maintained at the GS-5 level."

On 25 June 1990 the Assistant Secretary-General for Human Resources Management communicated his final decision to the Applicant in a letter reading in part:

> "I note that although the recommendation of the New York General Service Classification Appeals and Review Committee was communicated to you with my decision in September 1989, the findings of the NYGSCARC were omitted.

> Therefore, I requested the NYGSCARC to again review your case and to communicate its findings to me in accordance with para. 10 (d) of ST/AI/301 of 10 March 1983 (...).
>
> ...
>
> I have reviewed my decision in the light of the Committee's findings and have decided to approve the recommendation of the New York General Service Classification Appeals and Review Committee to maintain the level of the post at the GS-5 level. The findings and recommendations of the NYGSCARC are attached for your reference together with the classification notice.
>
> ..."

On 28 August 1990 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Gross procedural irregularities were committed in the classification exercise by the United Nations Administration, by the Dag Hammarskjold Library Administration, by the Classification Section, by the Classification Review Panel and by the New York General Service Classification Appeals and Review Committee.

2. The Applicant was denied due process of law and procedural safegards in the appeal before the New York General Service Classification Appeals and Review Committee.

3. The Applicant was denied "acquired rights" to the corresponding highest level General Service post as Supervisor at the GS-7 level under the new seven-level grade structure.

4. Unreasonable delays occurred in the New York General Service Classification Appeals and Review Committee procedures, causing thereby a "denial of justice".

Whereas the Respondent's principal contentions are:

1. The classification of the Applicant's post at the GS-5 level was a proper exercise of administrative discretion in accord with the Applicant's terms and conditions of employment.

2. The classification of the Applicant's post was properly motivated.

3. The Applicant's post was classified in accordance with proper procedures and in full observance of his due process rights.

4. Given the complexity of the classification of General Service posts at Headquarters and the desire to ensure that every staff member's claims were fully heard by independent appeal and review bodies, no unreasonable delay occurred that would warrant award of compensation.

The Tribunal, having deliberated from 17 October to 7 November 1991, now pronounces the following judgement:

I. The Applicant has complained of the rejection of his request for oral proceedings. In the opinion of the Tribunal, the complaint is unfounded and the presentation of the case has not been hindered. The Applicant has submitted numerous pages of argument and a great number of documents. He has stated that he believes that all requisite documents are before the Tribunal.

II. The Tribunal cannot substitute its judgement for that of the Secretary-General in job classification matters. Judgement No. 396, Waldegrave (1987), paragraph XV. This point is not in dispute. The Tribunal must, however, consider whether there was a material error in procedure or substance, or some other significant flaw in the decision complained of.

III. Allegation of duress

The Applicant asserts that threats of retaliatory action were made against him to prevent him "from recording correctly and completely his job descriptions". This grave allegation is unsupported by evidence before the Tribunal. Furthermore, in his memorandum of 30 April 1987 addressed to the Assistant Secretary-General for Human Resources Management, the Applicant stated: "I believe that the functions of my post were correctly described in my job description but that the classification standard was improperly applied, this resulting in a lower grade level than is warranted".

IV. Lack of expert advice

The Applicant asserts that, in the absence of expert advice from a specialist or consultant on library and information science, the Respondent improperly applied the International Civil Service Commission's General Service job classification standards.

The Tribunal finds that the Respondent was not obliged by any rule or regulation to employ an expert or consultant.

V. Lack of an accurate organization chart

The Applicant complains that the Administration of the Dag Hammarskjold Library failed to prepare and attach a complete and current organization chart to the Applicant's classification form, as required by the form itself, and that this deficiency persisted throughout the classification process. The Classification Section, the Applicant asserts, had a legal obligation to require a complete and current organization chart to be submitted, and he charges that Section with having "deliberately contributed to the gross procedural irregularities in the reclassification of the Applicant's post ...". The Tribunal notes that this intemperate accusation of deliberate wrongdoing is not supported by evidence.

The Tribunal has made inquiries of both parties and has been informed by them that in fact the Classification Section made use of a revised organization chart of the Collection Management Section. The Applicant states that he had no knowledge of this revised chart, which he says was prepared by the Administration without his consent. On this chart the Applicant is described as a "Supervisor", but he asserts that it wrongly shows him as reporting only indirectly to the Chief of the Collection Management Section, whereas he should have been shown as reporting directly to the Chief. The Tribunal, however, accepts the statement of the Chief of the Compensation and Classification Service, made in a memorandum of 22 October 1991 addressed to Counsel for the Respondent in reply to the Tribunal's request for clarification, that:

> "... the post of Chief, Collection Management Section, was considered to be the official supervisor of the post and the post to whom the Applicant officially reported ..."

and that

> "it should be pointed out that the depiction of a relationship between posts on an organizational chart need not signify a formal supervisory relationship."

That being so, the Tribunal considers that the chart complained of cannot be taken as signifying a different formal supervisory relationship applying to the Applicant, so that the relative position of the officers on the chart used by the Classification Section did not constitute an error of fact in the classification decision.

VI. Lack of job classification audit

Another procedural objection made by the Applicant is that no complete job classification audit was made. The interview conducted by Ms. D. Bunker with the Applicant he describes as incomplete and "virtually a mockery". Whether or not these criticisms are justified, there was in fact no legal obligation upon the Respondent to conduct a classification audit, though wisdom may have dictated that this should be done. Under paragraph 13 of Administrative Instruction ST/AI/301 of 10 March 1983, a classification audit "may be necessary. The Classification Section will therefore conduct classification audits from time to time" (emphasis added). From this wording, it is evident that the Classification Section was to have discretion as to whether to conduct an audit in any particular case. The Applicant cannot base his claim upon alleged failure to conduct what he perceived to be an adequate audit in his case.

VII. Failure to attach ICSC Form P.271 to Administrative Instruction ST/AI/301

Also without substance is the Applicant's argument that the Respondent was obliged to attach ICSC Form P.271 (General Service Job Classification Standards) to Administrative Instruction ST/AI/301 thereby enabling staff members to describe their functions in accordance with the exact terminology of ICSC standards. These standards had been announced in Information Circular ST/IC/82/66 of 13 October 1982. All General Service staff at Headquarters should have been aware of the existence of the ICSC

standards, which were in a published official document. Furthermore, the Applicant conceded that in May 1986 he was aware of the document. The Tribunal concurs in the Respondent's view that posts are classified according to the nature and duties assigned to them, and not on the basis of words extracted from the International Civil Service Commission standards. Indeed, in the Tribunal's view it would be wrong for a job description to be artificially tailored to fit in with the wording of those standards.

VIII. Alleged lack of due process before NYGSCARC

The Applicant challenges the rules under which classification appeals are conducted and claims that due process is denied if the staff member concerned does not see and does not have the opportunity to comment on the documentation sent by the service in charge of classification to the appeals body. The Tribunal deems it appropriate in proceedings before that appeals body that both parties should see such documentation considered by that body. The Tribunal expresses no view in this judgement as to documentation provided by the appeals body's own staff or consultants. The Tribunal recommends that an amendment to the rules provide for the access to documentation and the opportunity to comment referred to above. However, in this case it appears from responses to questions put to the Applicant by the Tribunal that all the pertinent information the Applicant wished to submit was before the appeals body. Furthermore, since the appeals body maintained the G-5 classification of the post and thus declined to accept the conclusion reached in the documentation in question recommending classification at the G-4 level, the Tribunal does not consider that the Applicant suffered any injury by reason of the absence of such an opportunity.

In an interoffice memorandum of 27 February 1990 from the Legal Counsel to the Assistant Secretary-General for Human Resources Management, consideration was given to the adequacy of the reviews performed by NYGSCARC. The memorandum concluded that that body had omitted any analysis of each individual appeal, had made no record of consideration of the arguments advanced by the Appellants and had not recorded any reasoning showing how each individual recommendation on the level of the post was arrived at. The decision of the Assistant Secretary-General for Human Resources Management also did not contain any findings of NYGSCARC as

required by Administrative Instruction ST/AI/301. Although the Legal Counsel's memorandum did not refer to the Applicant, it is evident that he was included in the 127 cases referred to.

Following this advice, NYGSCARC was invited by the Administration to review the Applicant's case again. Its findings, made on 7 June 1990, leave no doubt that the deficiencies commented upon by the Legal Counsel had been remedied. The findings included an analysis of the Applicant's individual appeal in respect of job description No. N03920, a record of the incumbent's argument and of the reasoning which led to NYGSCARC's decision to recommend that the post be maintained at the G-5 level. In particular, the findings recorded the Applicant's claim that he was involved in "many complex tasks requiring a great deal of in-depth knowledge of the organization and structure of the Dag Hammarskjold Library as well as of the Organization as a whole". The Tribunal's view is that the Applicant's appeal having been considered and reviewed by NYGSCARC, which took into account all of the matters recited in its findings of 7 June 1990, the Applicant cannot reasonably contend that he was deprived of a fair hearing or of any other element of due process.

The Applicant has asserted other claims of denial of due process which the Tribunal has examined and found to be wholly lacking in merit.

IX. The Tribunal accordingly holds that there has been no material error in procedure or substance and no other significant flaw in the contested decision, and consequently finds that the Secretary-General has properly exercised his discretion.

X. Alleged violation of acquired rights

The Applicant asserts that the decision to classify his post at the G-5 level violated his acquired rights. His argument rests on his having exercised supervisory functions at the G-5 level under the five-level system and that, inasmuch as the International Civil Service Commission replaced the five-level system with a seven-level system, he had an acquired right to classification at the highest level under the seven-level system, i.e. at the G-7 level. The Tribunal cannot agree that the creation of two levels superior to G-5 obliged the Respondent to classify the Applicant's post at the higher of the two new levels, i.e. at the G-7 level. A functional

title of Supervisor is not part of the Applicant's terms of employment and does not create an acquired right automatically entitling him to a higher grade level than is found to be appropriate for his post. Nor does such a functional title create an acquired right, in effect, exempting the Applicant from the Secretary-General's exercise of his authority under the Staff Regulations with respect to classification of posts. Cf. Judgement No. 432, Lackner (1988), paragraphs XI and XIII (a).

XI. Delay

The Tribunal regrets that the Applicant's appeal was not disposed of more expeditiously, but it appreciates the heavy task of the Administration in dealing thoroughly with no less than 127 appeals in the course of the review process of NYGSCARC. In any event, the Tribunal adheres to its jurisprudence that it will not award compensation to an Applicant for delay unless he proves that he has suffered injury as a result. (Judgement No. 327, Ridler (1984), para. IX). In this case, the Applicant suffered no such injury, having retained his post and his salary in the meanwhile.

XII. Finally, the Tribunal does not agree that articles 2 and 7 of the Universal Declaration of Human Rights, which are in general terms relating particularly to freedom from discrimination, are relevant to the Applicant's case.

XIII. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Arnold KEAN
Member

Luis de POSADAS MONTERO
Member

New York, 7 November 1991

Jean HARDY
Acting Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/542
7 November 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 542

Case No. 560: PENNACCHI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Ahmed Osman, Vice-President, presiding; Mr. Ioan Voicu; Mr. Luis de Posadas Montero;

Whereas, on 10 April 1990, Luisa Pennacchi, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed her application on 9 July 1990;

Whereas the application contained the following pleas:

"II. PLEAS

...

MAY IT PLEASE the Administrative Tribunal of the United Nations

As to the form:

To declare the present application receivable;

As to the merits:

a. As a preliminary measure

To hear Mrs. F. PATARD and Mr. Pierre Henry MININI as witnesses;

b. Substantively

- To declare null and void the decision of 26 October 1988 to suspend the Applicant without pay for one month, as confirmed by the decision of 8 January 1990;

c. Having done that

- To order UNICEF to pay to the Applicant fair compensation for moral injury;

- To order UNICEF to pay to the Applicant, as costs, fair compensation."

Whereas the Respondent filed his answer on 15 February 1991;

Whereas, on 31 May 1991, the Applicant filed written observations in which she requested inter alia that consideration of her case be adjourned pending a decision by the Respondent on another appeal filed by her concerning termination of her permanent appointment for abolition of post;

Whereas the facts in the case are as follows:

The Applicant, who held a permanent appointment with the UNICEF Office at Geneva as an Administrative Services Clerk at the G-3 level, was involved on 25 and 26 April 1988 in incidents which the Joint Disciplinary Committee of the United Nations Office at Geneva has described as follows:

"5. On 25 April 1988, an argument over cutting and photocopying of documents took place between Mrs. Pennacchi and Mrs. Chantal Tissot, another UNICEF staff member.

6. Later on 25 April 1988, Mrs. Pennacchi reported to her supervisor, Mr. A. Mitzmacher, the argument she had with Mrs. Tissot that day and complained about Mrs. Tissot's impolite attitude towards her.

7. The following day, 26 April 1988, another incident took place between Mrs. Pennacchi and Mrs. Chantal Tissot, involving alleged physical violence by Mrs. Pennacchi.

8. On 27 April 1988, Mrs. Tissot submitted her written statement concerning the incidents she had with Mrs. Pennacchi on 25 and 26 April 1988 (...)."

On 27 April 1988 the Director of the UNICEF Office at Geneva decided to suspend the Applicant from duty with full pay pending investigation under staff rule 110.4. On 28 April 1988 the Applicant was informed accordingly. On 23 June 1988 the Director of the UNICEF Office at Geneva submitted the Applicant's case to the Joint Disciplinary Committee of the United Nations Office at Geneva.

The Joint Disciplinary Committee, having heard the representative of the Administration, the Applicant, Mrs. Tissot, an eye-witness and the supervisor of the Applicant on 26 August 1988, submitted its report on 12 September 1988. The conclusions and recommendations of the Committee read as follows:

"IV. CONCLUSIONS AND RECOMMENDATIONS

A. Range of disciplinary measures considered

68. After considering the above, the Committee reviewed all possible disciplinary measures.

69. The Committee agreed that dismissal was too excessive a penalty in view of the predominance of attenuating factors. The Committee next considered suspension without pay or demotion and concluded that none of these two measures would be justified for the same reasons given above.

70. Moreover, the Committee took into account the fact that Mrs. Pennacchi was on suspension (even with full pay) since four months and has therefore already been effectively penalized morally and professionally by being deprived of work. Her credibility at work was, and still is, impaired as a result of this suspension.

B. Recommendations

71. In view of the foregoing, the Committee recommends:

(a) that a written censure be addressed to Mrs. Pennacchi for misconduct under staff rule 110.3(b),

(b) that Mrs. Tissot be made aware, by way of reprimand, of the fact that her unfounded remarks and lack of consideration with regard to an ailing colleague have initiated and escalated the incident."

On 26 October 1988 the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had taken the following decision in her case:

"The Secretary-General has examined your case in the light of the Committee's report and taken note of its finding that you slapped and pushed a colleague and used excessive language. The Committee found, moreover, that you were not under physical threat and therefore there was no excuse for you to resort to physical violence. Your actions were obviously incompatible with your responsibility and conduct befitting your status as an international civil servant under staff regulation 1.4. It has therefore been decided to suspend you from service without pay for one month with effect from the date of this decision, as a disciplinary measure under staff rule 110.3(b). In view of the seriousness of the matter, the Secretary-General may be obliged, in case of any further act of violence on your part, to impose on you the most severe disciplinary measure under staff regulation 10.2, paragraph 2."

On 6 December 1988 the Applicant lodged an appeal with the Joint Appeals Board at Geneva, which submitted its report on 11 December 1989. The Board's conclusions and recommendation read as follows:

"Conclusions and Recommendation

41. In view of the foregoing, the Panel unanimously concludes that:

(a) the Appellant's misconduct has been properly established by the JDC [Joint Disciplinary Committee];

(b) the Appellant was accorded due process before a decision was reached to suspend her without pay for one month as a disciplinary measure under staff rule 110.3(b);

(c) the decision to suspend the Appellant for one month as a disciplinary measure under staff rule 110.3(b) was a proper exercise of the Secretary-General's discretionary power, and that the contested decision was not tainted by prejudice or any other extraneous factor.

42. Accordingly, the Panel makes no recommendation in support of the appeal."

On 8 January 1990 the Officer-in-Charge of the Department of Administration and Management advised the Applicant that the Secretary-General, having re-examined her case in the light of the Board's report, had decided to maintain the contested decision. On 9 July 1990 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied due process. Her right to be heard was disregarded in many respects. At no stage of the proceedings was she confronted with Mrs. Tissot. The other persons involved were heard in her absence. Statements favourable to her were not taken.

2. While the decision to suspend the Applicant from duty was taken with undue haste, the investigation was deliberately slow in order to exert pressure on the Applicant so that she would resign her post.

3. The contested decision was disproportionate and, moreover, followed a suspension from duty of several months. No effort at conciliation was made. The Respondent disregarded attenuating factors, thereby abusing his discretion in disciplinary matters.

Whereas the Respondent's principal contentions are:

1. The United Nations Charter and the Staff Regulations oblige the Secretary-General to select and retain staff of the highest standards of efficiency, competence and integrity and, therefore, he has the responsibility of determining definitively whether a staff member meets those standards.

2. The decision to suspend the Applicant without pay for one month was properly taken after the Applicant had been accorded due process.

3. The sanction to be imposed for misconduct is a matter within the discretion of the Secretary-General.

The Tribunal, having deliberated from 16 October to 7 November 1991, now pronounces the following judgement:

I. The Applicant has asked for the hearing of two witnesses. The Tribunal considers that the material presented is sufficient and that the hearing of additional testimony is unnecessary.

II. The Applicant has also requested that the present case be adjourned pending a decision by the Respondent on another appeal filed by the Applicant concerning termination of her permanent appointment for abolition of post. Since the present case is ready for adjudication and the second appeal referred to by the Applicant has not yet been brought before the Tribunal, the Tribunal sees no justification for such an adjournment.

III. The Applicant appeals against the Secretary-General's decision to suspend her from service without pay for one month as a disciplinary measure under staff rule 110.3(b).

The impugned decision results from the finding of the Joint Disciplinary Committee at Geneva that the Applicant had slapped and pushed a colleague and used excessive language, thus committing actions which were obviously incompatible with the responsibility and conduct befitting her status as an international civil servant under staff regulation 1.4. The

Respondent determined that the Applicant's actions constituted misconduct and displayed a behaviour which fell short of the standards of conduct required from international civil servants.

IV. The Tribunal recalls that the United Nations Charter and the Staff Regulations vest in the Secretary-General the authority to determine whether a staff member has met the required standards of conduct. The Secretary-General has broad discretion in exercising his disciplinary authority as regards both the evaluation of the facts and the disciplinary measure to be imposed in specific cases of misconduct.

V. However, as recalled in Judgement No. 515, Khan (1991), paragraph II.2, "... the Tribunal is competent to review the Respondent's decision if it is vitiated by lack of due process or by a mistake of fact or law, or is arbitrary or motivated by prejudice or by other extraneous factors".

VI. The Tribunal notes that there is no dispute between the parties as to the facts as established by the Joint Disciplinary Committee and by the Joint Appeals Board at Geneva.

VII. The Applicant contests the Respondent's decision on a number of grounds. She claims that her right to be heard was not respected; that testimony favourable to her was not taken; that the decision to suspend her during investigation was taken hastily and lightly; that the investigation was delayed and conducted slowly; that the contested decision was disproportionate, which constituted an error of law; that there were attenuating factors in favour of the Applicant; that no attempt at conciliation was made and that suspending the Applicant from service for six months was in itself a serious sanction considering the actions imputed to the Applicant.

VIII. The Tribunal observes that most of those grounds invoked by the Applicant were carefully examined by the Joint Disciplinary Committee and by the Joint Appeals Board. The Board reported thereon as follows:

> "35. ... the Appellant had been properly afforded due process during the entire JDC [Joint Disciplinary Committee] proceedings, since:
>
> (a) she was availed a complete duplicate copy of the JDC case file on 27 June 1988, and was informed of her right to have a counsel, if required;
>
> (b) she was given the right to submit in writing her version of the matter;
>
> (c) she was heard by the JDC on 26 August 1988, and was present during the entire hearing of the representative of UNICEF Administration and other witnesses;
>
> (d) the JDC, a fact-finding body established under staff regulation 10.1 with both administrative and staff participation, determined the facts and unanimously reached its conclusions after having examined the facts as well as the written and oral testimonies by witnesses, including those of the Appellant.
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> 36. In view of the above considerations, the Panel finds that the Appellant was accorded due process before a decision was reached to suspend her without pay for one month as a disciplinary measure under staff rule 110.3(b). The Panel observed in this connection that the Appellant's claim that the JDC report 'is based on wrong testimonies and unfounded allegations' was not substantiated by any evidence."

IX. After reviewing the work of the Joint Disciplinary Committee and the Joint Appeals Board in this respect, the Tribunal endorses the Board's findings mentioned in the preceding paragraph. The Tribunal will now examine the other contentions of the Applicant.

X. As to the Applicant's contention that the decision to suspend her from duty was taken with undue haste, the Tribunal notes that the decision was taken only after Mrs. Tissot complained to the Administration, which in turn wrote to the Applicant on 28 April 1988 suspending her with full pay during investigation and without prejudice to her rights. The Tribunal finds that the action taken in this regard was in full compliance with the provisions of staff rule 110.4.

XI. The Applicant also contends that the investigation in her case was deliberately slow in order to exert pressure on her so that she would resign her post. The Tribunal is unable to accept this contention as the submission of the Applicant's case to the Joint Disciplinary Committee took only two months, which does not seem to be unreasonable. Moreover, this delay was not prejudical to the Applicant as she was on suspension with full pay.

XII. The Tribunal notes with regret the lack of efforts, on the part of UNICEF, at reconciliation between the Applicant and Mrs. Tissot. However, the Tribunal does not believe that such lack of efforts constitutes a vitiating factor which could amount to denial of due process to the Applicant.

XIII. The Applicant further argues that an error of law was committed because the sanction imposed on her was out of all proportion to the offense, and that the Respondent disregarded attenuating factors, thereby abusing his discretion in disciplinary matters.

XIV. The Tribunal recalls, as it did in Judgement No. 300, Sheye (1982), paragraph IX, "... that it has in its jurisprudence consistently recognized the Secretary-General's authority to take decisions in disciplinary matters, and established its own competence to review such decisions only in certain exceptional

conditions, e.g. in case of failure to accord due process to the affected staff member before reaching a decision".

In the present case, the Tribunal finds that such exceptional conditions do not exist. Therefore, the Tribunal cannot entertain the Applicant's claim for rescission of the Secretary-General's decision on the ground of the severity of the penalty.

XV. Taking into account all the circumstances of the case, the Tribunal holds that the contested decision was not vitiated by any error of fact or of law or by any lack of due process, nor arbitrary or motivated by prejudice or any other extraneous factors, and that the decision constituted therefore a valid exercise of the Secretary-General's discretion in disciplinary matters.

XVI. For the foregoing reasons, the application is rejected.

(Signatures)

Ahmed OSMAN
Vice-President

Ioan VOICU
Member

Luis de POSADAS MONTERO
Member

New York, 7 November 1991

Jean HARDY
Acting Executive Secretary